Supreme Court, U.S.
FILED
MAY 13 1997
OFFICE OF THE CLERK

No. 96-1562

In The

# Supreme Court of the United States

October Term, 1996

SAMANTHA SISTRUNK,

*Petitioner,*

*vs.*

CITY OF STRONGSVILLE, OHIO and THE BUSH-QUAYLE '92 GENERAL COMMITTEE, INC.,

*Respondents.*

*On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit*

## PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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For her reply brief, petitioner Samantha Sistrunk wishes to respond to two points raised in the respondents' briefs in opposition.

The Bush-Quayle '92 General Committee, Inc. (the "Committee") suggests that petitioner had no right to wear her political button to the event because -- as an invited member of the audience at the rally -- "[she] was not content 'to stand on the sidewalk' and express her views from that side of the rope." (Committee Br. in Opp. 8.) This misstates the issue. Petitioner's right to speak does not depend solely upon whether she is standing on one "side of the rope" or the other. Instead, the question is whether petitioner's expressive activity would have altered the content of the Committee's message at the rally by, for example, actively incorporating her speech into the Committee's or by compelling the Committee to affirm a belief with which it disagreed. If the Committee's speech would not have been so altered by petitioner, then the Committee's ability to exercise its right to free speech was not at risk and the constitutional justification for its restraint on petitioner's expressive activity disappears.

Thus, in Hurley v. Irish-American Gay Group of Boston, 115 S. Ct. 2338, 2349 (1995), this Court decided not to require a private parade organizer to include an unwanted participant, only after carefully analyzing how each marcher in a parade affects the overall message of the event. This Court explained:

> Unlike the programming offered on various channels by a cable network, the parade does not consist of individual, unrelated segments that happen to be transmitted together for individual selection by members of the audience. Although each parade unit generally identifies itself, each

> is understood to contribute something to a common theme, and accordingly there is no customary practice where private sponsors disavow 'any identity of viewpoint' between themselves and the selected participants . . . . [E]ach unit's expression is perceived by spectators as part of the whole.

Id. at 2349. As Hurley suggests, this is not a formalistic exercise: petitioner's First Amendment rights should not turn solely upon where she wished to stand at the rally but on whether her display of a political button would have altered the content of the Committee's message.

Both respondents also contend that this Court should deny certiorari on the ground that petitioner failed to allege state action. Respondents argue state action is lacking here because the conduct of the City of Strongsville ("City") was "wholly unrelated" to the Committee's suppression of petitioner's political speech. (Committee Br. in Opp. at 6-7; City Br. in Opp. at 7-11.) Respondents are incorrect.

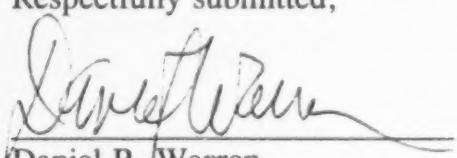
Petitioner's allegations (which the lower courts were bound to construe, under Fed. R. Civ. P. 12(b)(6), in the light most favorable to petitioner) demonstrate that the City, pursuant to municipal policy, authorized the Committee to regulate public access to the Commons based on the content of speech. Moreover, the City's highest officials then joined with the Committee to market the rally to the public as a community event sponsored by the City itself. The City's highest official, Mayor Ehrnfelt, acted as the rally's host. Tickets bearing his name were distributed to citizens from City Hall. The City's public schools bused students to the Commons on City school buses, and permitted them to miss class in order to attend the

rally. Mayor Ehrnfelt appeared on the podium alongside the Committee's chosen speakers under a banner proclaiming: "Strongsville Trusts George Bush." The Committee regulated access to the Commons with the acquiescence of the City's Chief of Police, who later expressly ratified the Committee's suppression of dissent at the rally.

These allegations were the subject of voluminous briefing in the lower courts, and they are more than sufficient to raise the inference that the City itself was a party to the Committee's unconstitutional acts. Petitioner's First Amendment claim is therefore appropriate for adjudication by this Court.

Petitioner respectfully requests that a writ of certiorari be granted.

Respectfully submitted,



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